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### TJRC Hearing Procedures

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**KENYA TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**  
**STANDARD OPERATING PROCEDURES DURING HEARINGS GENERALLY**

**STANDARD OPERATING PROCEDURES DURING HEARINGS**

The objective and mandate of the KENYA TJRC, as set forth in Sec 5 of the TRUTH, JUSTICE AND RECONCILIATION Act of 2008 is to promote peace, justice, national unity, healing and reconciliation among the people of Kenya

In exercise of the powers conferred by Section 29 of the Truth Justice and Reconciliation Act, 2008 the TJRC made the Truth Justice and Reconciliation (Hearing Procedure) Rules, 2010

1. Hearings shall be conducted in the eight designated regions of the country through the five coordination offices.
2. Hearing panels shall be constituted for purposes of hearings, having a minimum of three commissioners, with the possibility of multiple panels operating simultaneously. Hearing panels shall have at least one person of the opposite gender, and shall include at least one international commissioner.
3. Official languages shall be English and Swahili.
4. The Commission will employ the use of qualified language and sign interpreters for languages other than English and Swahili should there be need.
5. All statements, remarks and questions during the hearings will be addressed to the Panel, and not to other participants.
6. Under no circumstance shall counsel question a witness directly or make a statement to the Commission on behalf of a witness, except by permission of the presiding officer.

**I. CASE APPLICATION**

Following research, investigation and analysis, a sample of the statements will be selected under the direction of Commissioners to create window cases which are reflective of major patterns of gross violations as disclosed by all the statements collected. The selected cases will be investigated and information verified before they proceed for hearing, though all statements taken will be part of the historical records from the process.

1. There shall be a thirty-day (30) day notice period.
2. The witnesses<sup>1</sup> whose cases have been selected will be notified by the Commission as stipulated in (1), unless the Commission otherwise directs.
3. Persons adversely or otherwise mentioned in the statements of selected cases will be informed and provided with an opportunity to respond at least seven days before the hearing, unless the Commission otherwise directs..

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<sup>1</sup> The word witnesses in this document shall refer to both witnesses and victims

4. Pre-hearing meetings and counseling will be undertaken with parties who will appear before the Commission
5. Participants will be expected to make oral submissions before the hearing Panel
6. Participants will be allowed to have written submissions from which they can read, if they so wish.
7. A witness will be fully heard on the same day, unless otherwise advised by the Commission for reasons determined by the Panel
8. This is a non-judicial process designed to provide a safe space for individuals to provide their testimony, and the Commission will be guided by this purpose in the conduct of its hearings.

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## II. SCHEDULING OF HEARINGS

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1. The Commission will publish a schedule of hearing venues and times.
2. Venues will be determined with the help of local officers and other organizations based on the ground, but at the full discretion of the Commission, considering, among other things, logistical requirements.
3. Participants will be notified of the date, time and venue of the scheduled hearings.
4. Notification will be through contacts provided by the statement givers; or any other means the Commission deems effective.

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## III. RE-SCHEDULING OF HEARINGS

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1. If the hearing panel is for any reason hindered from conducting a hearing, or a hearing has been interrupted for any reason, the Commission may reschedule such hearing.
2. Re-scheduling of hearings is at the sole discretion of the Commission.
3. Reasons for re-scheduling may include but are not limited to:
  - a. Absence or illness of key Commission staff or Hearing Panelists;
  - b. Limited staff capacity;
  - c. Non attendance of witnesses
  - d. A witness is unable to proceed with hearing due to medical reasons.
4. If a hearing is rescheduled due to 3(a) or (b) above, witnesses shall be contacted in a timely manner in order to minimize inconvenience.
5. If the Commission decides to re-schedule a hearing, then it shall give a minimum of 24 hours notice to the participants of the hearing before the rescheduled hearing.
6. A witness may request that a hearing be rescheduled for good cause by providing such a request, with the details of the reason for the request, at least 48 hours in advance. The decision to reschedule the hearing shall be made by the Commission in its sole discretion.
7. The Commission will record reasons for rescheduling of hearings

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## IV. NON ATTENDANCE

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1. If a witness does not attend a hearing, the hearing panel shall take notice of such failure to participate and, if the failure to participate is for good cause, shall consider rescheduling the hearing.
2. Should a witness fail to attend for the second time, or if the witness fails to appear before the Commission with an explanation of his absence within fourteen days of the first hearing, the hearing panel may issue a summons or initiate other action as they deem appropriate.
3. If a witness attends the rescheduled hearing he/she shall provide the Hearing Panel with an explanation for the failure to appear. Such explanation will be recorded and entered in the case file.
4. If cases are removed from the hearing schedule following a failure to appear or after the issuance of summons and/or warrants;
  - i. Re-opening requests from persons with legal and physical protection needs shall be processed on an accelerated basis.
  - ii. The written re-opening request shall be made to the Chair or Vice Chair of the Commission who will forward the application to the Hearing Panel
  - iii. The application for re-opening shall be considered by the Hearing Panel. In reviewing such requests, the Hearing Panel shall consider whether the applicant has missed several scheduled hearings without a valid explanation, and whether there is good reason to believe that the applicant is not acting in good faith.
  - iv. The Hearing Panel may request the Chairman of the Commission or Vice Chairman of the Commission to re-schedule the case as per the scheduling procedures under 1<sup>st</sup> instance hearing procedures.
  - v. All the above situations are at the control and discretion of the Commission.

## V. CONSTITUTION OF PANELS

The Chairperson and the Vice Chairperson of the Commission may assign files to respective hearing panels guided by the following:

- a. The relationship to individual, thematic or institutional hearings.
- b. Geography, ethnicity, workload, knowledge, availability, and gender.
- c. Case files shall not be assigned to a hearing panel where any of the panellists may have any business or other relationship with a witness or interested party that would affect the appearance of objectivity of the Hearing Panel and the Commission.
- d. Any other factor or reason that could affect public confidence in the fairness and objectivity of the hearing.

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## VI. SPECIAL PROCEDURES

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Special procedures may be established for hearings of certain categories of witnesses (including persons with physical and legal protection needs such as children, women at risk, disabled and elderly persons) in order to facilitate their participation in the process.

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## VII. IN CAMERA HEARINGS

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1. The Commission may determine that all or a part of a hearing will be held *in camera*. Any participant may request that the hearing be held *in camera* by filing such a request, including the reasons for the request, at least seven days prior to the start of the hearing in question.
2. If a witness requests anonymity, and the Commission grants such a request, then special procedures will be put in place to conceal the identity of the witness. Such special procedures may include masking the visual identity and muffling the voice of the witness.
3. Cross examination by an interested party of an anonymous witness may be allowed at the discretion of the Commission subject to undertakings relating to non-disclosure and protection of the witness. If an anonymous witness is not subject to cross examination, the Commission shall take that fact into account in determining the credibility of the content of the testimony.
4. Media will not be allowed to participate in an *in camera* hearing.

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## VIII. OUT OF VENUE HEARING PROCEDURE

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1. The Hearing Panel can choose to visit any site as part of a hearing, and may conduct all or part of a hearing at a site with special significance if the Panel deems it necessary for the attainment of truth, justice and reconciliation.
2. If the Hearing Panel decides to visit such a site or to move a hearing to such a site, hearing participants will be informed at least one day before the hearing

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## IX. EXCLUSION OF A PERSON(S) DURING THE HEARINGS

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1. A witness may request in writing the removal of, or prevent the attendance of, any person, groups of person or institution on the basis that their participation jeopardizes the security or other interests of the witness/victim or otherwise obstructs the objectives of the Commission.
2. The Commission may, on its own initiative, remove or prevent the attendance of any person, groups of person or institution on the basis that their participation jeopardizes the security or other interests of the hearing participants, or if the Commission believes that their presence would otherwise obstructs the objectives of the Commission